IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

Crl.MC.No. 2309 of 2006()

AGAINST THE ORDER IN CRMP.NO.3342/06 IN
CC.883/2001 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR

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PETITIONER: PETITIONER/COMPLAINANT

M/S.TUBE ASSOCIATES, A PROPRIETARY
CONCERN, MRS.MINI MARSON, W/O.MARSON CHERIAN,
PROPRIETIX, M/S.TUBE ASSOCIATES,REP.BY THE MANAGER
AND POWER OF ATTORNEY HOLDER, E.L.JINACHANDRAN,
AGED 49, S/O.LAKSHMANAN, ETHATHIRIPARMBIL HOUSE,
NANDIKARA, PARAPUKARA, THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: RESPONDENTS/ACCUSED AND STATE OF KERALA

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1. P.D.RAJESH, S/O.PLAMOOTIL DEVASSY,
PROPRIETOR, M/S.PLAMOOTIL SANIWARE,
K.S.R.T.C.BUS STAND, ETTUMANOOR,
KOTTAYAM DISTRICT.

2. THE STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN
SRI.JIJO PAUL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 21/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.2309 OF 2006

Dated this the 21st day of December, 2006.

ORDER

The petitioner is the complainant in a prosecution under Section 420 I.P.C. His application under Section 311 Cr.P.C to re-open the evidence and examine one witness was turned down by the learned Magistrate. The petitioner has come to this Court with this petition under Section 482 Cr.P.C to complain about the rejection of his petition under Section 311 Cr.P.C.

2. Initially the grievance was that an offence under Section 138 of the N.I Act has been committed. In the course of the trial, the complainant came to realise that the cheque issued was really not one of which the accused is an account holder. In these circumstances, it was prayed and the said request was accepted by the court, that the charge may be altered to one under Section 420 I.P.C. The evidence was closed. The matter was posted for 313 examination. At that stage, the complainant made a request to examine one more witness, who was not available after re-opening the evidence. That application was rejected by the learned Magistrate holding that sufficient reasons are not there to invoke the powers under Section 311 Cr.P.C.

3. Counsel have been heard. I shall scrupulously avoid any detailed reference to disputed facts. Suffice it to say that I am persuaded that the interests of justice shall be served ideally by granting the petitioner one further opportunity to adduce further evidence by examining the one witness referred in the petition.

4. In the result:

a) This Crl.M.C is, in these circumstances, allowed.

b) The impugned order is set aside;

c) It is directed that the petitioner shall be granted an opportunity to examine the witness, whom he wants to examine. The learned Magistrate shall post the case specifically to a date for such examination. Witness shall be examined on that date.

R.BASANT
JUDGE

rtr/